

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR**

GRUMA CORPORATION d/b/a MISSION FOODS

and

**Cases 04-CA-199438 and
04-CA-202091**

**UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 1776**

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 04-CA-199438 and 04-CA-202091, which are based on charges filed by United Food and Commercial Workers Local 1776 (the Union) against Gruma Corporation, d/b/a Mission Foods (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 04-CA-199438 was filed by the Union on May 25, 2017, and a copy was served on Respondent by U.S. mail on May 25, 2017.

(b) The first amended charge in Case 04-CA-199438 was filed by the Union on June 21, 2017, and a copy was served on Respondent by U.S. mail on June 22, 2017.

(c) The second amended charge in Case 04-CA-199438 was filed by the Union on July 10, 2017, and a copy was served on Respondent by U.S. mail on July 11, 2017.

(d) The third amended charge in Case 04-CA-199438 was filed by the Union on August 25, 2017, and a copy was served on Respondent by U.S. mail on August 25, 2017.

(e) The fourth amended charge in Case 04-CA-199438 was filed by the Union on September 26, 2017, and a copy was served on Respondent by U.S. mail on October 18, 2017.

(g) The amended charge in Case 04-CA-202091 was filed by the Union on September 26, 2017, and a copy was served on Respondent by U.S. mail on September 27, 2017.

(b) During the past 12 months, in conducting its operations described above in subparagraph (a), Respondent sold and shipped from the Facility goods valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)

(c) At all material times, Respondent retained and utilized an attorney as a negotiator on its behalf, who has been an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and warehouse employees, sanitation and maintenance employees, quality control employees and lead employees employed by the Employer at its 15 Elmwood Road, Mountain Top, Pennsylvania facility; excluding all other employees, including office clerical employees, professional employees, confidential employees, sales employees, over the road truck drivers, managers, guards, and supervisors as defined in the Act.

(b) On May 23, 2016, the Board certified the Union as the exclusive collective-bargaining representative of the Unit.

(c) At all times since May 23, 2016, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6. Respondent, by (b) (6), (b) (7)(C) engaged in the following conduct:

(a) About January 22, 2017, at production line 2 at the Facility, threatened employees with job loss if they supported the Union.

(b) About June 15, 2017, on the production floor at the Facility: (i) informed employees that it was futile for them to select the Union as their bargaining representative by telling an employee that the Union would never get a contract; and (ii) threatened to discharge employees because Respondent's employees supported the Union.

7. Respondent, by various (b) (6), (b) (7)(C) whose names are set forth in paragraph 4(b), engaged in the following conduct (the identity of the (b) (6), (b) (7)(C) who engaged in the conduct described in each subparagraph is presently unknown to the General Counsel):

(a) On about January 16, 2017, in the management office at the Facility, informed employees that it was futile for them to select the Union as their bargaining representative by telling employees that Respondent did not have to agree to anything in bargaining, would never sign a contract, and would prolong the bargaining for a year so that employees could vote again on whether they wished to be represented by the Union.

(b) In about April 2017, a more precise date being presently unknown to the General Counsel, in a conference room at the Facility: (i) threatened employees with closure of the Facility because they selected the Union as their bargaining representative; and (ii) informed employees that it was futile for them to select the Union as their bargaining representative by telling employees Respondent would only provide benefits to employees if it wanted to do so.

(c) About May 31, 2017, in a room on the second floor of the Facility, informed employees that the Union was to blame for employees not receiving wage increases.

8. (a) At various times since about June 3, 2016, Respondent and the Union met for the purposes of negotiating an initial collective-bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

(b) Since about November 26, 2016, Respondent has failed and refused to meet with the Union at reasonable times for bargaining.

(c) Since about May 19, 2017, Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the Unit by: (i) refusing to explain to the Union why it believed the parties had not reached a collective-bargaining agreement; and (ii) refusing to meet and bargain with the Union until the Union agreed that the parties had not reached a collective-bargaining agreement.

(d) During the period set forth in subparagraph (a), Respondent: (i) bargained with the Union with no intention of reaching agreement; (ii) delayed in providing proposals to the Union; and (iii) refused to include a union security provision in the collective-bargaining agreement without legitimate business justification.

(e) By its overall conduct, including the conduct described above in paragraphs 6, 7, and 8(b), 8(c), and 8(d), Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

9. (a) About June 20, 2017, Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Unit.

(b) Respondent engaged in the conduct described above in subparagraph (a), although Respondent engaged in the conduct set forth in paragraphs 7 through 9 above and without having remedied such conduct.

(c) Respondent engaged in the conduct described above in subparagraph (a), absent the result of an RM or RD election conducted by the Board.

10. About June 22 and June 23, 2017, Respondent, by (b) (6), (b) (7)(C) at meetings in a conference room at the Facility, announced to employees that, because Respondent's employees expressed that they no longer wished to be represented by the Union, Respondent was instituting a more lenient attendance policy and granting them a 3-percent wage increase and three sick days.

11. (a) About June 23, 2017, Respondent granted Unit employees a 3-percent wage increase.

(b) About July 1, 2017, Respondent: (i) granted Unit employees three paid sick days; and (ii) instituted a more lenient attendance policy.

(c) Respondent engaged in the conduct described above in subparagraphs (a) and (b) in order to discourage Unit employees from supporting or assisting the Union.

(d) The subjects set forth above in subparagraphs (a) and (b) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(e) Respondent engaged in the conduct described above in subparagraphs (a) and (b) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

12. By the conduct described above in paragraphs 6, 7, and 10, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

13. By the conduct described above in paragraphs 11(a), (b), and (c), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

14. By the conduct described above in paragraphs 8(b), 8(c), 8(e), 9, 11(a), 11(b), and 11(e), Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

15. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order requiring: (a) a responsible management official of Respondent to read the Notice to Employees at the Facility in English, Spanish, and Haitian Creole in the presence of a Board agent, or, at Respondent's option, a Board agent to read the Notice to Employees at the Facility in English, Spanish, and Haitian Creole in the presence of management officials; (b) Respondent to require that all employees at the Facility be present on at least one occasion when the Notice is read; and (c) Respondent to announce, schedule, and conduct the Notice readings in the same manner it customarily does when it wishes to convey information to all employees at the Facility in person.

The General Counsel further seeks an Order requiring Respondent to bargain with the Union on request for at least 24 hours per month, in sessions lasting not less than 6 hours, until an agreement or lawful impasse is reached.

The General Counsel further seeks an Order requiring Respondent to bargain in good faith with the Union, on request, for 12 months, as authorized by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before November 14, 2017 or postmarked on or before November 13, 2017.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

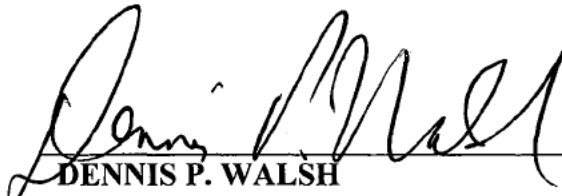
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT at **10:00 a.m.** on **December 18, 2017,** and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board at the William J. Nealon Federal Building and Court House, Courtroom #5, 235 North Washington Avenue, Scranton, Pennsylvania 18503. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be

followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed at Philadelphia, Pennsylvania this 31st day of October, 2017.



DENNIS P. WALSH

Regional Director, Fourth Region
National Labor Relations Board

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR**

GRUMA CORPORATION d/b/a MISSION FOODS

and

**Cases 04-CA-199438,
04-CA-202091 and
04-CA-209548**

**UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 1776**

**ORDER FURTHER CONSOLIDATING CASES, AMENDED CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 04-CA-199438, 04-CA-202091, and 04-CA-209548, which are based on charges filed by United Food and Commercial Workers Local 1776 (the Union) against Gruma Corporation, d/b/a Mission Foods (Respondent) are consolidated.

This Second Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 04-CA-199438 was filed by the Union on May 25, 2017, and a copy was served on Respondent by U.S. mail on May 25, 2017.

(b) The first amended charge in Case 04-CA-199438 was filed by the Union on June 21, 2017, and a copy was served on Respondent by U.S. mail on June 22, 2017.

(c) The second amended charge in Case 04-CA-199438 was filed by the Union on July 10, 2017, and a copy was served on Respondent by U.S. mail on July 11, 2017.

(d) The third amended charge in Case 04-CA-199438 was filed by the Union on August 25, 2017, and a copy was served on Respondent by U.S. mail on August 25, 2017.

(e) The fourth amended charge in Case 04-CA-199438 was filed by the Union on September 26, 2017, and a copy was served on Respondent by U.S. mail on October 18, 2017.

(f) The charge in Case 04-CA-202091 was filed by the Union on July 10, 2017, and a copy was served on Respondent by U.S. mail on July 11, 2017.

(b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C).

(d) At all material times, Respondent retained and utilized an attorney as a negotiator on its behalf, who has been an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and warehouse employees, sanitation and maintenance employees, quality control employees and lead employees employed by the Employer at its 15 Elmwood Road, Mountain Top, Pennsylvania facility; excluding all other employees, including office clerical employees, professional employees, confidential employees, sales employees, over the road truck drivers, managers, guards, and supervisors as defined in the Act.

(b) On May 23, 2016, the Board certified the Union as the exclusive collective-bargaining representative of the Unit.

(c) At all times since May 23, 2016, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6. Respondent, by (b) (6), (b) (7)(C) engaged in the following conduct:

(a) About January 22, 2017, at production line 2 at the Facility, threatened employees with job loss if they supported the Union.

(b) About June 15, 2017, on the production floor at the Facility: (i) informed employees that it was futile for them to select the Union as their bargaining representative by telling an employee that the Union would never get a contract; and (ii) threatened to discharge employees because Respondent's employees supported the Union.

(c) About (b) (6), (b) (7)(C) 2017, at the office of (b) (6), (b) (7)(C) threatened an employee with discharge for questioning the legitimacy of Respondent's disciplinary investigation of two employees who supported the Union.

7. Respondent, by various (b) (6), (b) (7)(C) whose names are set forth in paragraph 4(b), engaged in the following conduct (the identity of the (b) (6), (b) (7)(C) who engaged in the conduct described in each subparagraph is presently unknown to the General Counsel):

(a) On about January 16, 2017, in the management office at the Facility, informed employees that it was futile for them to select the Union as their bargaining representative by telling employees that Respondent did not have to agree to anything in bargaining, would never sign a contract, and would prolong the bargaining for a year so that employees could vote again on whether they wished to be represented by the Union.

(b) In about April 2017, a more precise date being presently unknown to the General Counsel, in a conference room at the Facility: (i) threatened employees with closure of the Facility because they selected the Union as their bargaining representative; and (ii) informed employees that it was futile for them to select the Union as their bargaining representative by telling employees Respondent would only provide benefits to employees if it wanted to do so.

(c) About May 31, 2017, in a room on the second floor of the Facility, informed employees that the Union was to blame for employees not receiving wage increases.

8. (a) About (b) (6), (b) (7)(C) 2017, Respondent suspended its employees (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

(b) About (b) (6), (b) (7)(C) 2017, Respondent discharged (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

(c) Respondent engaged in the conduct described above in subparagraphs (a) and (b) because (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) supported the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

9. (a) At various times since about August 23, 2016, Respondent and the Union met for the purposes of negotiating an initial collective-bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

(b) Since about November 26, 2016, Respondent has failed and refused to meet with the Union at reasonable times for bargaining.

(c) Since about May 19, 2017, Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the Unit by: (i) refusing to explain to the Union why it believed the parties had not reached a collective-bargaining agreement; and (ii) refusing to meet and bargain with the Union until the Union agreed that the parties had not reached a collective-bargaining agreement.

(d) During the period set forth in subparagraph (a), Respondent: (i) bargained with the Union with no intention of reaching agreement; (ii) delayed in providing proposals to the Union; and (iii) refused to include a union security provision in the collective-bargaining agreement without legitimate business justification.

(e) By its overall conduct, including the conduct described above in paragraphs 6, 7, and 9(b), 9(c), and 9(d), Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

10. (a) About June 20, 2017, Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Unit.

(b) Respondent engaged in the conduct described above in subparagraph (a), although Respondent engaged in the conduct set forth in paragraphs 6, 7, and 9 above and without having remedied such conduct.

(c) Respondent engaged in the conduct described above in subparagraph (a), absent the result of an RM or RD election conducted by the Board.

11. About June 22 and June 23, 2017, Respondent, by (b) (6), (b) (7)(C) at meetings in a conference room at the Facility, announced to employees that, because Respondent's employees expressed that they no longer wished to be represented by the Union, Respondent was instituting a more lenient attendance policy and granting them a 3-percent wage increase and three sick days.

12. (a) About June 23, 2017, Respondent granted Unit employees a 3-percent wage increase.

(b) About July 1, 2017, Respondent: (i) granted Unit employees three paid sick days; and (ii) instituted a more lenient attendance policy.

(c) Respondent engaged in the conduct described above in subparagraphs (a) and (b) in order to discourage Unit employees from supporting or assisting the Union.

(d) The subjects set forth above in subparagraphs (a) and (b) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(e) Respondent engaged in the conduct described above in subparagraphs (a) and (b) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

13. By the conduct described above in paragraphs 6, 7, and 11, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

14. By the conduct described above in paragraphs 8 and 12(a), 12(b), and 12(c), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

15. By the conduct described above in paragraphs 9(b), 9(c), 9(e), 10, 12(a), 12(b), and 12(e), Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

16. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order requiring: (a) a responsible management official of Respondent to read the Notice to Employees at the Facility in English, Spanish, and Haitian Creole in the presence of a Board agent, or, at Respondent's option, a Board agent to read the Notice to Employees at the Facility in English, Spanish, and Haitian Creole in the presence of management officials; (b) Respondent to require that all employees at the Facility be present on at least one occasion when the Notice is read; and (c) Respondent to announce, schedule, and conduct the Notice readings in the same manner it customarily does when it wishes to convey information to all employees at the Facility in person.

The General Counsel further seeks an Order requiring Respondent to bargain with the Union on request for at least 24 hours per month, in sessions lasting not less than 6 hours, until an agreement or lawful impasse is reached.

The General Counsel further seeks an order requiring that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) be made whole, including, but not limited to, payment for consequential economic harm they incurred as a result of Respondent's unlawful conduct.

The General Counsel further seeks an Order requiring Respondent to bargain in good faith with the Union, on request, for 12 months, as authorized by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before December 15, 2017 or postmarked on or before December 14, 2017**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer

rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT at **10:00 a.m.** on **December 18, 2017**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board at the William J. Nealon Federal Building and Court House, Courtroom #5, 235 North Washington Avenue, Scranton, Pennsylvania 18503. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed at Philadelphia, Pennsylvania this 1st day of December, 2017.

A handwritten signature in dark ink, appearing to read "Dennis P. Walsh", is written over a horizontal line.

DENNIS P. WALSH

Regional Director, Fourth Region
National Labor Relations Board

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR**

GRUMA CORPORATION d/b/a MISSION FOODS

and

**Cases 04-CA-199438,
04-CA-202091 and
04-CA-209548**

**UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 1776**

**ORDER FURTHER CONSOLIDATING CASES, SECOND AMENDED
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 04-CA-199438, 04-CA-202091, and 04-CA-209548, which are based on charges filed by United Food and Commercial Workers Local 1776 (the Union) against Gruma Corporation, d/b/a Mission Foods (Respondent) are consolidated.

This Order Further Consolidating Cases, Second Amended Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 04-CA-199438 was filed by the Union on May 25, 2017, and a copy was served on Respondent by U.S. mail on May 25, 2017.

(b) The first amended charge in Case 04-CA-199438 was filed by the Union on June 21, 2017, and a copy was served on Respondent by U.S. mail on June 22, 2017.

(c) The second amended charge in Case 04-CA-199438 was filed by the Union on July 10, 2017, and a copy was served on Respondent by U.S. mail on July 11, 2017.

(d) The third amended charge in Case 04-CA-199438 was filed by the Union on August 25, 2017, and a copy was served on Respondent by U.S. mail on August 25, 2017.

(e) The fourth amended charge in Case 04-CA-199438 was filed by the Union on September 26, 2017, and a copy was served on Respondent by U.S. mail on October 18, 2017.

(f) The charge in Case 04-CA-202091 was filed by the Union on July 10, 2017, and a copy was served on Respondent by U.S. mail on July 11, 2017.

(g) The amended charge in Case 04-CA-202091 was filed by the Union on September 26, 2017, and a copy was served on Respondent by U.S. mail on September 27, 2017.

(h) The second amended charge in Case 04-CA-202091 was filed by the Union on December 19, 2017, and a copy was served on Respondent by U.S. mail on December 19, 2017.

(i) The charge in Case 04-CA-209548 was filed by the Union on November 9, 2017, and a copy was served on Respondent by U.S. mail on November 9, 2017.

(j) The amended charge in Case 04-CA-209548 was filed by the Union on November 27, 2017, and a copy was served on Respondent by U.S. mail on November 28, 2017.

2. (a) At all material times, Respondent has been a corporation with an office and place of business in Mountain Top, Pennsylvania (the Facility) and has been engaged in the production and distribution of food products.

(b) During the past 12 months, in conducting its operations described above in subparagraph (a), Respondent sold and shipped from the Facility goods valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. (a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)

(b) At all material times until about June 2017, (b) (6), (b) (7)(C) held the position of Respondent's (b) (6), (b) (7)(C) and was (b) (6), (b) (7)(C) of Respondent within the meaning of

[illegible]

(d) At all material times, the following individuals were employees of Respondent and agents of Respondent within the meaning of Section 2(13) of the Act: (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C).

(e) At all material times, Respondent retained and utilized an attorney as a negotiator on its behalf, who has been an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and warehouse employees, sanitation and maintenance employees, quality control employees and lead employees employed by the Employer at its 15 Elmwood Road, Mountain Top, Pennsylvania facility; excluding all other employees, including office clerical employees, professional employees, confidential employees, sales employees, over the road truck drivers, managers, guards, and supervisors as defined in the Act.

(b) On May 23, 2016, the Board certified the Union as the exclusive collective-bargaining representative of the Unit.

(c) At all times since May 23, 2016, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6. (a) At various times from about June 2016 until about June 2017, more precise dates being presently unknown to the General Counsel, Respondent, by (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and various other (b) (6), (b) (7)(C) whose names are currently unknown to the General Counsel, at the Facility and Luigi's Restaurant in

Mountain Top, Pennsylvania, instigated, promoted, assisted, and encouraged employees to circulate and sign a petition to decertify the Union.

(b) During the period from about June 2016 until about June 2017, Respondent, by (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and various other (b) (6), (b) (7)(C) whose names are currently unknown to the General Counsel, provided more than ministerial assistance to employees in helping them get rid of the Union.

7. At various times from about February 2017 through about June 2017, more precise dates being presently unknown to the General Counsel, Respondent, by (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C), at the Facility, solicited employees to sign a petition to decertify the Union.

8. At various times from about February 2017 through May 2017, more precise dates being presently unknown to the General Counsel, Respondent, by (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and two other unidentified (b) (6), (b) (7)(C), in the second floor meeting room at the Facility and Luigi's Restaurant in Mountain Top, Pennsylvania, promised employees that, if they decertified the Union, Respondent would give employees (i) three sick days and a wage increase and (ii) the same benefits the Union was seeking.

9. About early May 2017, a more precise date being presently unknown to the General Counsel, Respondent, by (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and two other unidentified (b) (6), (b) (7)(C), at the second floor meeting room of the Facility, promised employees that Respondent would provide employees with benefits if employees decertified the Union.

10. Respondent, by (b) (6), (b) (7)(C) :

(a) In about February 2017, in the cafeteria at the Facility, promised employees that Respondent would give employees the same benefits the Union was seeking if employees decertified the Union.

(b) In about May 2017, at the Facility (i) promised employees that Respondent would give employees sick days and a wage increase if employees decertified the Union, and (ii) threatened employees with job loss if they did not sign a decertification petition.

11. About December 8, 2017, Respondent issued subpoenas duces tecum to the Union and employees (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), that demanded information about employees' (i) Union activity, and (ii) participation in Board investigations.

12. Respondent, by (b) (6), (b) (7)(C) engaged in the following conduct:

(a) About January 22, 2017, at production line 2 at the Facility, threatened employees with job loss if they supported the Union.

(b) About June 15, 2017, on the production floor at the Facility: (i) informed employees that it was futile for them to select the Union as their bargaining representative by telling an employee that the Union would never get a contract; and (ii) threatened to discharge employees because Respondent's employees supported the Union.

(c) About (b) (6), (b) (7)(C), 2017, at the office of (b) (6), (b) (7)(C) threatened an employee with discharge for questioning the legitimacy of Respondent's disciplinary investigation of two employees who supported the Union.

13. Respondent, by various (b) (6), (b) (7)(C) whose names are set forth in paragraph 4(c), engaged in the following conduct (the identity of the (b) (6), (b) (7)(C) who engaged in the conduct described in each subparagraph is presently unknown to the General Counsel):

(a) On about January 16, 2017, in the management office at the Facility, informed employees that it was futile for them to select the Union as their bargaining representative by telling employees that Respondent did not have to agree to anything in bargaining, would never sign a contract, and would prolong the bargaining for a year so that employees could vote again on whether they wished to be represented by the Union.

(b) In about April 2017, a more precise date being presently unknown to the General Counsel, in a conference room at the Facility: (i) threatened employees with closure of the Facility because they selected the Union as their bargaining representative; and (ii) informed employees that it was futile for them to select the Union as their bargaining representative by telling employees Respondent would only provide benefits to employees if it wanted to do so.

(c) About May 31, 2017, in a room on the second floor of the Facility, informed employees that the Union was to blame for employees not receiving wage increases.

14. (a) About (b) (6), (b) (7)(C), 2017, Respondent suspended its employees (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

(b) About (b) (6), (b) (7)(C) 2017, Respondent discharged (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

(c) Respondent engaged in the conduct described above in subparagraphs (a) and (b) because (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) supported the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

15. (a) At various times since about August 23, 2016, Respondent and the Union met for the purposes of negotiating an initial collective-bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

(b) Since about November 26, 2016, Respondent has failed and refused to meet with the Union at reasonable times for bargaining.

(c) Since about May 19, 2017, Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the Unit by: (i) refusing to explain to the Union why it believed the parties had not reached a collective-bargaining agreement; and (ii) refusing to meet and bargain with the Union until the Union agreed that the parties had not reached a collective-bargaining agreement.

(d) During the period set forth in subparagraph (a), Respondent: (i) bargained with the Union with no intention of reaching agreement; (ii) delayed in providing proposals to the Union; and (iii) refused to include a union security provision in the collective-bargaining agreement without legitimate business justification.

(e) By its overall conduct, including the conduct described above in paragraphs 6, 7, 8, 9, 10, 12, 13, and 15(b), (c), and (d), Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

16. (a) About June 20, 2017, Respondent withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Unit.

(b) Respondent engaged in the conduct described above in subparagraph (a) although it committed unfair labor practices having a tendency to cause the loss of majority Union support.

(c) Respondent engaged in the conduct described above in subparagraph (a) based on a petition that it unlawfully instigated, promoted, assisted, encouraged, or otherwise directly advanced.

17. About June 22 and June 23, 2017, Respondent, by (b) (6), (b) (7)(C) at meetings in a conference room at the Facility, announced to employees that, because Respondent's employees expressed that they no longer wished to be represented by the Union, Respondent was instituting a more lenient attendance policy and granting them a 3-percent wage increase and three sick days.

18. (a) About June 23, 2017, Respondent granted Unit employees a 3-percent wage increase.

(b) About July 1, 2017, Respondent: (i) granted Unit employees three paid sick days; and (ii) instituted a more lenient attendance policy.

(c) Respondent engaged in the conduct described above in subparagraphs (a) and (b) in order to discourage Unit employees from supporting or assisting the Union.

(d) The subjects set forth above in subparagraphs (a) and (b) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(e) Respondent engaged in the conduct described above in subparagraphs (a) and (b) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

19. By the conduct described above in paragraphs 6 through 13, and 17, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

20. By the conduct described above in paragraphs 14 and 18(a), 18(b), and 18(c), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

21. By the conduct described above in paragraphs 15(b), 15(c), 15(d), 15(e), 16, 18(a), 18(b), and 18(e), Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

22. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order requiring: (a) a responsible management official of Respondent to read the Notice to Employees at the Facility in English, Spanish, and Haitian Creole in the presence of a Board agent, or, at Respondent's option, a Board agent to read the Notice to Employees at the Facility in English, Spanish, and Haitian Creole in the presence of management officials; (b) Respondent to require that all employees at the Facility be present on at least one occasion when the Notice is read; and (c) Respondent to announce, schedule, and conduct the Notice readings in the same manner it customarily does when it wishes to convey information to all employees at the Facility in person.

The General Counsel further seeks an Order requiring Respondent to bargain with the Union on request for at least 24 hours per month, in sessions lasting not less than 6 hours, until an agreement or lawful impasse is reached.

The General Counsel further seeks an Order requiring Respondent to bargain in good faith with the Union, on request, for 12 months, as authorized by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The General Counsel further seeks an Order requiring Respondent to reimburse the Union for all costs and expenses, including salaries, incurred in collective-bargaining negotiations.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before January 4, 2018 or postmarked on or before January 3, 2018.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT at 10:00 a.m. on January 9, 2018, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board at the William J. Nealon Federal Building and Court House, Courtroom #5, 235 North Washington Avenue, Scranton, Pennsylvania 18503. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be

followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Signed at Philadelphia, Pennsylvania this 21st day of December, 2017.

A handwritten signature in black ink, appearing to read "Dennis P. Walsh", is written over a horizontal line.

DENNIS P. WALSH
Regional Director, Fourth Region
National Labor Relations Board